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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------------|
| 10/726,690 | 12/04/2003 | Senya Yamanaka | 2003_1750A | 5656 |
| 513 7590 10/04/2007 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021 | | | EXAMINER STULII, VERA | |
| | | | ART UNIT 1761 | PAPER NUMBER |
| | | | MAIL DATE 10/04/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|-----------------|-----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/726,690 | YAMANAKA, SENYA | |
| | Examiner | Art Unit | |
| | Vera Stulii | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The rejection of claims 7 and 8 under 35 U.S.C. 112, second paragraph has been withdrawn due to the claims amendments.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over coldmountainmiso.com (hereinafter referred to as CMM) in view of Sato Hisakatsu (JP 2001231501) and North American New Product Report.

The references and rejection are incorporated as cited in the previous Office action.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato Hisakatsu (JP 2001231501) in view of coldmountainmiso.com (hereinafter referred to as CMM) and North American New Product Report.

The references and rejection are incorporated as cited in the previous Office action.

Response to Arguments

Applicant's arguments filed July 24, 2007 have been fully considered but they are not persuasive. On page 5 of the Reply to Office action mailed January 25, 2007, Applicant states that "The Official Action recognizes that the prior art does not teach

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employing brown rice as presently recited, namely, retaining the bran layer and embryo part and removing only scarf skin, but rather teaches employing either polished or brown rice or a mixture thereof". It is noted that **coldmountainmiso.com** reference (hereinafter referred to as CMM) teaches a method of making Amazake using brown rice. Sato Hisakatsu also teaches making Amazake using germinated brown rice. Both references do not explicitly state removal of scarf skin (the outermost layer of rice grain). However, as evidenced by HANDBOOK OF CEREAL SCIENCE AND TECHNOLOGY (hereinafter referred to as HCST), rice is harvested as a covered grain in which kernel is encased in a protective hull or husk (outermost layer) (p.302). After the hull is removed, the kernel is known as brown rice regardless of its visual color (pp. 302, 304). The area between the hull and endosperm including the outer layer of endosperm (aleurone) are known as bran. The innermost part of the rice grain is germ (embryo) (pp. 302, 304). Thus, as evidenced by HCST, brown rice is a grain from which the germ and bran have not been removed. Therefore, both CMM reference and Sato Hisakatsu disclose brown rice grain from which the germ and bran have not been removed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS


KEITH HENDRICKS
PRIMARY EXAMINER